of Louisiana under Articles 21, 2292, 2293, and 2294 of the Louisiana Civil Code[1] and the following decisions of the Supreme Court of Louisiana: *Viens v. Brickle*, 8 Mart. (O.S.) 11 (1820); *Delamour v. Roger*, 7 La. Ann. 152 (1852); *Malady v. Malady and Caldwell*, 25 La. Ann. 448; *Succ. of Pereuilhet*, 23 La. Ann. 294 (1871); *Succ. of Llula*, 44 La. Ann. 61 (1892); *Sparrow v. Sparrow*, 231 La. 966, 93 So. (2d) 232 (1957); *Thompson v. Walker*, 235 La. 132, 103 So. (2d) 65, 67 (1958).

(b) Was not Stricker's right to relief established by virtue of the judicial admissions of Morgan in the course of trial in the District Court as well as by Morgan's admissions in writings, in evidence, of Stricker's interest in the subject of litigation?

(c) Is there in fact any material conflict in the evidence as to the contractual relationship and rights of the parties litigant?

(d) Is there in fact evidence in this record, conflicting or otherwise, that supports the findings of fact of the District Court that have been sanctioned by the opinion of the Court of Appeals?

(e) Are the findings of fact of the District Court, sanctioned by the decision of the Court of Appeals, contrary to the undisputed evidence in the record?

(f) Did the Court of Appeals err in sanctioning the decision of the District Court (likewise erroneous) in

[1] See Appendix VI.

holding that the relationship of joint adventurers cannot be established under the Louisiana jurisprudence in the absence of an authenticated recorded contract in writing, again notwithstanding unauthenticated and unrecorded written evidence of the existence of such contract?

(g) Did the Court of Appeals err in sanctioning the action of the District Court (likewise erroneous) in limiting the admitted effect of the judicial admissions of Defendant Morgan made in course of trial in the District Court as to timber rights admittedly acquired, *ab initio*, and vested in Stricker, which judicial admission (R. Vol. 4, pp. 692-693) contained no limitation of ownership but the effect of which was limited by the District Court (R. Vol. 13, pp. 2471-2474) with no evidence to support such action.

(h) Did the District Court, with subsequent sanction by the Court of Appeals, make findings of fact of which there is no evidence in the record and unsupported by any logical inference from the facts?

(i) Did the District Court make a decision (sanctioned by that of the Court of Appeals) that is contrary to all of the evidence (undisputed and uncontroverted in any material aspect) in this record?

STATEMENT OF THE CASE.

BASIC FACTS:

R. M. Stricker, a resident of Wilkinson County, Mississippi, petitioner herein, filed suit against J. P. Morgan, a

resident of Jefferson Parish, Louisiana, for an accounting and to recover his undivided one-half interest in Esperanza Plantation, situated in Concordia Parish, Louisiana. Morgan removed the case to the United States District Court for the Southern District of Mississippi. The case was tried in that court and a judgment was rendered adverse to Stricker. Stricker appealed to the United States Circuit Court of Appeals for the Fifth Circuit. That court affirmed the decision of the District Court.

The decision adverse to Stricker is contrary to the established jurisprudence of Louisiana as will be shown hereinafter.

The opinion of the circuit court rendered herein, in part, states:

> "Defendant (Morgan) stands on the argument that plaintiff (Stricker) is not entitled to any relief, because his relationship with plaintiff (Stricker) was governed by Louisiana law, which barred plaintiff's recovery because the contract was not in writing."

Similarly, the opinion of the district court held Stricker was trying to establish title to Esperanza Plantation by parol evidence. This is not true.

To the contrary, Stricker introduced correspondence, memoranda and other written records, as will be in part set out hereinafter, conclusively showing Stricker is entitled to an accounting and to be awarded the interest in Esperanza Plantation he claims in this litigation.

Stricker's claim to an accounting and an undivided one-half interest in said Esperanza Plantation is based particularly, but not exclusively, on the following facts shown by the record.

Prior to November, 1935, Stricker for years had been engaged in buying and selling timber and timberlands, in logging and timbering businesses and operations, and Morgan had been operating a sawmill and box manufacturing business in his home parish in Louisiana under the name of the Louisiana Box Company, and about that time Stricker and Morgan agreed to pool their talents and capital in the business of buying certain lands and timber in the area familiar to Stricker, that is, Mississippi and Louisiana, particularly along the Mississippi River.

Said agreement entered into by and between Stricker and Morgan on or about November 16, 1955 was a profit and loss sharing contract and agreement which created the status between them that has been denominated by them as a partnership. Their first operations were in Mississippi. No formal written articles of agreement were executed by the parties. The fact of the agreement and the agreement itself and the terms and provisions thereof are conclusively shown by the acts and conduct of the parties between themselves and with others, by many instruments, memoranda, communications, and accounts and other items in writing, shown in the record in this cause.

The record in this case, which contains most of the correspondence, financial statements, accountings, instructions, and other writings between Stricker and Morgan and other parties conclusively establishes this agreement. For example, on August 8, 1942, replying to a letter of August 7th written by Stricker to Morgan detailing receipts and disbursements, profits and losses for standing timber operations on the Point Breeze *timber tract in Concordia Parish, Louisiana*, Morgan wrote a letter to Stricker (See original, Plaintiff's Exhibit 104, Sheet 15, offered in evidence at R. Vol. 8, p. 1448) as follows:

> "*Remember our original agreement on every deal that we made at the start was that I was to take off 6% for the money that was invested until it was paid*, but when there was only one man by the name of Stricker in it with Morgan, Morgan failed to take off the 6% because he likes Stricker".—(Emphasis supplied; see Appendix 2504B, p. 3).

The agreement between Stricker and Morgan, definitely and clearly established by the evidence (letters, financial statements, accountings, cancelled checks, and other writings) was that Stricker, who had expert knowledge of timber, timberlands and plantations, would locate, as opportunities should be presented, various tracts of land and timber that in his opinion could be purchased, managed and handled on a profitable basis; that he would have the timber on said lands cruised and, as and if he should consider the same a profitable purchase, he would present the matter of the purchase to the consideration of Morgan; that upon approval

of such purchase by Morgan on the recommendations Stricker, Morgan would advance and pay all of the purchase price, costs and expenses of acquisition and operation of the properties, including taxes, attorneys' fees and other expenses, and title to all of such properties purchased should be taken in the name of Morgan; that Stricker would manage, look after and control the property, make all contracts for cutting and removing timber therefrom, tend to logging and rafting the timber for delivery to Morgan's plant located in Jefferson Parish, Louisiana insofar as Morgan's requirements were concerned, and in some instances would sell the lands and timber to third parties; Stricker and Morgan would sometime lease the property for exploration for oil and gas, and when Morgan had been repaid the amount of his cash outlays and interest at the rate of 6% per annum thereon, that *all profits would be divided, share and share alike*, between Stricker and Morgan, and thereafter Morgan would convey to Stricker an interest with himself in the land, or timber, or land and timber, as the case might be, Stricker and Morgan sharing equally. Stricker and Morgan shared equally the profits and losses as is undisputably shown by the record. In some transactions, by mutual consent of Stricker and Morgan, other parties would be brought into the particular transaction but always, as the record undisputably shows, Morgan and Stricker would share equally in what remained after Morgan recovered his costs.

* The record contains numerous letters, memoranda, and documents wherein both Stricker and Morgan refer to

their contractural relationship as a partnership. (Original, Plaintiff's Exhibit 75, Sheet 2, offered R. Vol. 8, p. 1411; Original, Plaintiff's Exhibit 88, Sheet 12, offered in evidence at R. Vol. 8, p. 1437; Original, Plaintiff's Exhibit 104, Sheet 15, offered in evidence at R. Vol. 8, p. 1448; Original, Plaintiff's Exhibit 106, Sheets 1 and 2, offered in evidence at R. Vol. 8, p. 1451; Original, Plaintiff's Exhibit 152, Sheet 19, offered in evidence at R. Vol. 9, p. 1595; Original, Plaintiff's Exhibit 107, Sheet 1, offered at R. Vol. 8, pp. 1450-1451 and copy of R. Vol. 8, pp. 1451 and 1453; Original, Plaintiff's Exhibit 111, Sheets 19 and 20, offered at R. Vol. 8, pp. 1450-1451; Original, Plaintiff's Exhibit 113, Sheet 15 and 16, offered at R. Vol. 8, pp. 1450-1451; Original, Plaintiff's Exhibit 113, Sheet 36, offered at R. Vol. 8, pp. 1450-1451; Original, Plaintiff's Exhibit 122, Sheet 9, offered at R. Vol. 8, pp. 1450-1451; Original, Plaintiff's Exhibit 122, Sheet 11, offered at R. Vol. 8, pp. 1450-1451; Plaintiff's Exhibit 125, offered at R. Vol. 8, p. 1464; Plaintiff's Exhibit 133, Sheet 2, offered at R. Vol. 8, p. 1477.)

The record shows Stricker and Morgan purchased under this profit and loss sharing agreement timber and land and sometimes timber alone, the following properties in Mississippi and Louisiana:

(1) Walnut Grove in Wilkinson County, Mississippi

(2) MacKellar in Wilkinson County, Mississippi

(3) Bramlette in Wilkinson County, Mississippi

(4) Kraetzer—Cured Lumber Contract, also known as Cat Island or Dr. Loab timber tract in West Feliciana Parish, Louisiana

(5) Artonish in Wilkinson County, Mississippi

(6) Stockett in Wilkinson County, Mississippi

(7) Point Breeze in Concordia Parish, Louisiana

(8) Esperanza in Concordia Parish, Louisiana

(9) Woodlawn Plantation in Wilkinson County, Mississippi

(10) Mackie Tract in West Feliciana Parish, Louisiana

(11) Beavin's or Cole's Creek in Jefferson County, Mississippi.

A partial list of the documents and writings respecting these transactions between Stricker and Morgan relating to each tract that were introduced in evidence follows:

WALNUT GROVE TRACT.

P-65, Sheets 1, 2, 5, 7, 10, 12, 14-16; P-67, Sheets 1, 15-17, 25; P-68, Sheets 5, 6; P-70, Sheets 6, 9; P-71, Sheet 8; P-72, Sheets 1, 11-13; P-73, Sheet 22; P-74; Sheets 1-4; P-75, Sheets 1-5; P-76, Sheets 1-6, 10-13; P-77, Sheets 5, 10-22; P-80, entire exhibit; P-18, Sheets 1-5; P-83, Sheet 9; P-86, Sheets 1-3; P-88, Sheets 3-5; P-89, Sheets 9-10; P-96, Sheets 1-2; P-100, Sheet 1; P-102, Sheets 2-4, 6-32; P-105, Sheet 17; P-109, Sheets 1-2, 23-24, 30-31; P-110, Sheets 17-18; P-111, Sheets 19-20, 30; P-112, Sheet 1; P-113, Sheets 12, 14, 17-20; P-114, Sheets 4-5, 42-49; P-115, Sheets 1-4; P-116, Sheets 2, 8-10, 13, 14-15, 23-28; P-122, Sheets 1-7, 12; P-127, Sheets 1-7; P-128, Sheets 15-20; P-129, Sheets 1-3, 27-30;

P-130, Sheets 1-8; P-132, Sheets 6-10; P-133, Sheets 2, 8-19; P-134, Sheets 1-11; P-135, entire exhibit; P-147, Sheets 1-4, 6, 12; P-155, Sheets 3, 5, 11; P-159, Sheet 6; P-162; P-217, entire exhibit; D-53.

MacKELLAR TRACT.

P-65, Sheet 10; P-67, Sheets 2-14, 22, 23; P-68, Sheets 1, 2, 4, 7-13; P-70, Sheets 1-5, 7-10, 12-15, 16-20; P-71, Sheets 1-6, 9-14, 17; P-72, Sheets 1-4, 6-10; P-73, Sheets 1-8, 11-13; P-91, Sheet 5; P-102, Sheets 5-32; P-106, Sheet 5; P-113, Sheet 24; P-121, Sheets 1-2; P-128, Sheet 5; P-147, Sheets 5, 7, 14-15, 17; P-148, Sheets 1-6, 15-16; P-152, Sheet 18; P-154, Sheets 8-10, 23.

BRAMLETTE TRACT.

P-72, Sheet 5; P-97, Sheet 1; P-149, Sheets 1-3, 6-8, 11-12, 16, 19; P-150, Sheet 4; P-152, Sheet 2; P-153, Sheet 13; P-155, Sheets 22-23.

KRAETZER TRACT.

P-71, Sheets 17, 18; P-82, Sheets 1, 6; P-97, Sheet 3; P-103, Sheet 1; P-104, Sheets 1-4; P-106, Sheets 1-4; P-148, Sheets 11-14; P-163; D-80.

ARTONISH TRACT.

P-76, Sheets 7, 8, 16; P-77, Sheets 1-4, 6; P-86, Sheet 4; P-88, Sheets 1-2, 6-12; P-89, Sheets 1-5, 7-8; P-96, Sheet 3; P-99, entire exhibit; P-100, Sheets 1, 10, 18; P-101; P-105, Sheets 4-7, 14, 17; P-106, Sheet 4; P-109, Sheets 1-2, 8-9, 11, 12; P-110,

Sheets 1, 14, 16, 31; P-111, Sheets 1-5, 6, 10-11, 27; P-113, Sheets 15-16, 28-29, 31, 35-36; P-114, Sheets 12-40; P-115, Sheets 10-11, 17-19, 22-24; P-116, Sheets 16-22; P-117, Sheets 1-2; P-121, Sheets 1-2, 15; P-126, Sheets 2, 8-9; P-128, Sheets 1-3, 14; P-129, Sheets 5-10, 14-16, 21-23; P-130, Sheets 11-15, 20-23; P-133, Sheet 2; P-150, Sheets 1-3; P-152, Sheets 1, 11-14, 18, 21; P-154, Sheets 8-12, 16-17; P-155, Sheet 32; P-165; P-166; P-167; P-168; P-169; P-170; P-171; P-172; P-213; P-215; P-21y; P-218; P-219; P-220; P-221.

STOCKETT BROTHERS TRACT.

P-79, Sheets 2-6, 8; P-109, Sheets 5, 15-16, 21-22; P-111, Sheets 6, 8-9, 30-31; P-113, Sheets 15-16, 28-29, 35-36; P-114, Sheet 41; P-115, Sheets 3-4, 20-21; P-116, Sheets 2, 27-28; P-117, Sheet 1; P-123, Sheets 1-4; P-127, Sheet 1; P-129, Sheet 4; P-130, Sheet 10; P-149, Sheet 20; P-152, Sheet 10; P-154, Sheets 8-10; P-155, Sheets 12-13, 33-37, P-174; P-215.

POINT BREEZE.

P-73, Sheets 28-31; P-76, Sheet 77; P-89, Sheets 11-12; P-91, Sheets 2-3; P-92, entire exhibit; P-100, Sheet 8; P-104, Sheets 5-15; P-105, Sheets 1-3, 13; P-108, Sheets 5-8; P-109, Sheets 3-5, 13, 15; P-110, Sheets 5-12, 19-30; P-111, Sheets 12-18; P-112, Sheets 8-22; P-113, Sheets 1-11, 13, 21-23, 25; P-114, Sheets 1-3, 6-11; P-152, Sheet 20; P-153, Sheets 15, 19-20; P-155, Sheets 1-2, 9; P-175; P-176; P-177; D-101; D-102; D-104.

ESPERANZA TRACT.

P-83, Sheets 1-8; P-84; P-85, Sheet 1, 2; P-87, Sheet 1; P-88, Sheet 12; P-94, entire exhibit; P-98, entire exhibit; P-109, Sheets 25-26; P-115, Sheets 5-9; P-116, Sheets 1, 3, 6-7; P-117, Sheet 3; P-118; P-119, Sheets 1-15; P-120, entire exhibit; P-123, Sheets 5-7; P-124, Sheets 1-4; P-126, Sheets 3-7; P-128, Sheets 4, 6-7, 21-22; P-130, Sheets 8-9; P-132, Sheets 1-5; P-133, Sheets 3-7; P-151, entire exhibit; P-155, Sheets 6, 15-16, 18; P-156; P-158, entire exhibit; P-159, Sheets 1-3; P-161; P-179; P-214, entire exhibit.

WOODLAWN TRACT.

P-100, Sheets 1, 18; P-102, Sheet 1; P-106, Sheet 5; P-108, Sheets 1-2; P-110, Sheets 1, 15, 16; P-111, Sheets 6, 11, 29; P-112, Sheets 7, 23-49, 50; P-113, Sheets 15, 16, 24, 28-29, 33-34, 35-36, 37; P-115, Sheets 10-11, 22-24; P-116 Sheets 16-22; P-121, Sheets 1-2; P-126, Sheets 8-9; P-128, Sheets 1-3, 5, 8-13; P-129, Sheets 5-7, 12-16, 21-23; P-130, Sheets 11-16; P-152, Sheets 3-4, 6-9, 12-14, 18, 22-23; P-154, Sheets 19-20, 32; P-213; P-215; P-216.

MACKIE TRACT.

P-100, Sheets 7, 11, 17; P-103, Sheets 1, 3-11; P-105, Sheets 8-12, 15-16; P-109, Sheets 17-19, 21-22; P-111, Sheet 31; P-116, Sheets 14-15.

BEAVINS TRACT.

P-78, entire exhibit; P-90, Sheets 1-12; P-104, Sheet 15; P-105, Sheets 1-3.

The record conclusively shows that all these properties were found as excellent purchases by Stricker, and after the purchase under said agreement after Morgan obtained his purchase money back, together with all costs, all remaining, whether it be land and timber or timber alone if timber alone was purchased, *was divided equally between Stricker and Morgan, with the exception of Esperanza Plantation, which is the subject of this suit.*

In every instance Stricker was to and did share equally, share and share alike, with Morgan in the profits and losses on every purchase made pursuant to the original agreement, and after Morgan had recovered all of the purchase price, interest charges, costs and expenses of acquisition, costs and expenses of management, etc., in every instance Morgan did account to Stricker for his full share of profits and ultimately, though in some instances after some considerable number of years delay, did make conveyance to Stricker of Stricker's equity and share in remaining land where land had been purchased, *save only as to the Esperanza Plantation in Concordia Parish, Louisiana.* Morgan did account to Stricker for Stricker's full one-half share of profits in so much of the timber as was sold from Esperanza Plantation to General Box Company in 1947, but thereafter did refuse to accord to Stricker, Stricker's claimed half interest in the remainder of the land, timber and all mineral rights in Esperanza Plantation in Concordia Parish, Louisiana, or to account to him for all other profits therefrom.

Stricker claims the right to accounting, and to an undivided one-half interest in said Esperanza Plantation, based on partnership, joint adventure, constructive trust, and the written instruments, documents, and memoranda, referred to hereinafter.

From the documentary evidence introduced in this case, undisputed by any testimony of witnesses, it is conclusively established that the profit and loss sharing agreement between Stricker and Morgan had its inception in 1935 and continued in force and effect to the time of and after the institution of this suit by Stricker. The lands and property, timber and timberlands, purchased in Louisiana by said parties were purchased, applied, handled and managed and shared in, as to profits and losses, in all respects as were those lands, timber and lands and timbers purchased in and situated in the State of Mississippi. The only exception to this statement of fact is that after the acquisition of the Esperanza Plantation in Concordia Parish, Louisiana, after admission had been made in writing by Morgan that Stricker was a full partner with him in this purchase,[1] and after Stricker had handled the negotiations and execution and delivery of a mineral lease on Esperanza Plantation, demanding that certain special provisions be placed in the lease, being therein interested, when it later appeared that Esperanza would probably become an oil producing area, Morgan sought to devise ways, means and causes to deprive Stricker of his rights to a full share in the profits of the Esperanza purchase. These statements of fact are adequately supported by

[1] See Appendix 2501B, pp. 32, 37, 39.

the record. (R. Vol. 8, pp. 1505-1566, and Exhibits there referred to; R. Vol. 8, pp. 1579-1587; R. Vol. 9, pp. 1628-1639 and Exhibits there referred to; R. Vol. 9, pp. 1639-1644; R. Vol. 9, pp. 1644-1652, and Exhibits referred to therein; R. Vol. 9, pp. 1652-1674, and Exhibits referred to therein; R. Vol. 9, pp. 1674-1674, and Exhibits referred to therein; R. Vol. 9, pp. 1679-1684, and Exhibits referred to therein; R. Vol. 7, pp. 1244-1246, 1311, and Plaintiff's Exhibit 90; R. Vol. 9, p. 1786; R. Vol. 9, pp. 1764-1775, and Exhibits referred to therein; R. Vol. 9, pp. 1779-1781, and Exhibits referred to therein; R. Vol. 8, pp. 1478-1566, 1579-1593; R. Vol. 9, pp. 1628-1691, 1705; R. Vol. 10, pp. 1877, 1878, and Exhibits referred to therein.

It was through Stricker's efforts that Esperanza Plantation was located as a possible purchase by Stricker and Morgan. Stricker had the timber cruised,[2] as at that time Stricker and Morgan were primarily interested in the timber on said plantation. Stricker made a bid in writing for the timber.[3] It developed that the timber could not be purchased separately from the land on terms agreeable to Stricker and Morgan, so the entire plantation was purchased for the sum of $26,500.00, with the title taken in the name of Morgan as in other transactions. This purchase was concluded in January, 1941. The purchase price of said property was paid by Morgan in three checks and on the reverse side of each check it was stated that each respective check represented a portion of the purchase price of Esperanza Plantation.[4]

[2] See Appendix 2504B, pp. 9-14.
[3] See Appendix 2504B, p. 15.

Some few months after January, 1941, the date Esperanza Plantation was purchased in the name of Morgan under the agreement between Stricker and Morgan, John Dale of Vidalia, Louisiana, had a party interested in purchasing Esperanza Plantation and being aware of the fact that initially Morgan and Stricker had been interested primarily in purchasing only the timber on said plantation, addressed the following communication to Morgan dated September 16, 1941:

DALE, DALE & DALE
ATTORNEYS AT LAW
Owners of Abstract Books
VIDALIA, LOUISIANA
September 16, 1941.

John Dale
John Dale, Jr.
L. D. Dale

Mr. J. P. Morgan
Kenner, Louisiana

Dear Mr. Morgan:-

I have a proposition for the purchase of your Esperanza lands, excepting therefrom all timber, and would appreciate your letting me know your best price and terms, allowing a 5% commission for making the sale. (Emphasis added.).

Best personal regards.

Sincerely,

DALE, RICHARDSON & DALE,

(S.) JOHN DALE, JR.,

(John Dale, Jr.).

D2 hwc

(R. Vol. 3, p. 495, Plaintiff's Exhibit No. 34; Appendix VII, p. 57.)

It will be noted Dale in his letter to Morgan proposed to buy only the lands (Esperanza), and not the timber.

On September 23, 1941, only nine months after Stricker and Morgan had purchased the Esperanza tract, Morgan replied to Dale's letter, as follows:

September 23, 1941.

Mr. John Dale, Jr.,
Vidalia, Louisiana.

Dear Sir-

Yours of the 16th caught the writer out of town.

Note you probably have a purchaser for the Esperanza land. We would not mind selling the land with the right to reserve the timber and oil rights. I have information from fairly responsible sources that there may be a possibility of a good oil lease on this land. So if it is just the land you are interested in we would be more than glad to have you offer us the proposition you have and I will take same up with our good friend

Mr. Stricker who is a partner in this buy. (Emphasis added.)

Thanking you for the letter, I am
Yours very truly,
J. P. MORGAN.

JPM/G.

(R. Vol. 3, p. 497, Plaintiff's Exhibit No. 35; Appendix 2504B, p. 37.)

The record conclusively shows Stricker and Morgan were the only two involved in the Esperanza purchase. In plain English in this letter, Morgan admits Stricker owned an interest in the land. The record shows Stricker searched out and found that Esperanza Plantation could be purchased, had the timber cruised, handled all negotiations leading up to the purchase, had the property surveyed, and after the purchase, negotiated a mineral lease on the property.

Again, Charles Barchus who had been the agent for A. H. Campbell, former owner of Esperanza Plantation, wrote Morgan on October 12, 1941 as follows:

> "I was talking to Bob Graham and Jake Laub yesterday, and they told me that if you wanted to let them have Esperanza subject to the timber sale at $5,000.00 they would take it. They would prefer to pay half cash and the balance in one year at 6% but if you prefer cash they will raise the full amount.

"Will appreciate your letting me know at your earliest convenience." (Plaintiff's Ex. 94, p. 1; original sent up; Appendix 2504B, p. 38.)

In reply to the above communication, Morgan wrote Barchus on October 13, 1941 as follows: (Plaintiff's Ex. 94, p. 2; original sent up; Appendix 2504B, p. 39.)

"Yours of the 12th received and note your offer of $5,000.00 for the land.

"*Sorry to state but we have refused yesterday what I would consider a much better offer than this as we do not know just when we are going to be able to take the timber off. Therefore, I think it best for us to own, the land as long as we own the timber.*

"I expected to hear from Mr. Graham in accordance with our verbal agreements that he would rent land from us until we removed the timber, then we would sell land to him. He has said nothing more about it. I think now that would cancel our verbal agreement.

"Thanks just the same for your offer and sorry we are not able to accept it at this time." (Emphasis added.)

It will be noted Morgan, in his reply to Barchus, said, "Therefore, I think it is best for *us to own the land as long as we own the timber.*" In plain English Morgan admits and states in writing that Stricker owns an interest in the land and timber on Esperanza Plantation which Stricker is claiming in this litigation.

A judicial admission was made by counsel for Morgan at the trial in response to a "Request for Admission"

dated March 25, 1957, at which time Morgan's counsel stated:

> "Now then, over in No. 2 again there is a reference to an alleged statement that J. P. Morgan and R. M. Stricker acquired the timber and timber rights in Esperanza Plantation in copartnership and as equal partners. If Your Honor will recall, in the pre-trial conference, the question came up as to what was an issue in this case, and we stated to your Honor, and we will state to your Honor, that there is no controversy as to the timber. It is admitted that J. P. Morgan and R. M. Stricker each owned an undivided one-half interest in the timber." (R. Vol. 4, p. 692.)

and counsel further stated:

> "Now, we repeat to Your Honor that we are willing to admit to No. 3, that R. M. Stricker is now entitled and has been entitled to an undivided one-half interest in the timber on Esperanza Plantation. We still are willing to make that admission. We do say to your Honor that has not been an issue in the case and is not joined as an issue by the Pleadings.
>
> "BY THE COURT: As I understand it, you admit No. 3, but deny a partnership in the ownership, but admit that he owns a half interest in the timber and the timber rights.

"BY MR. BRUNINI: That is correct." (R. Vol. 4, p. 693.)[8]

The judicial admission taken with the letters written to Dale and Barchus by Morgan conclusively show that the Esperanza Plantation was purchased on same basis as the other tracts referred to herein, and that Stricker owned a half interest in the land and timber. Morgan, in his letter said, "Therefore, I think it best for us to own the land as long as we own the timber."

And again under date of October 27, 1941, Barchus wrote Morgan concerning the proposed oil and gas lease on Esperanza Plantation, as follows:

> "I am enclosing herewith a copy of my letter which I wrote you a little over a week ago, the original of which was lost. The agreement with Mr. Campbell is that he will lease for $1.00 per acre and pay a 10% commission which would be $125.00 on his half.
>
> "If this is agreeable to you, I am going right ahead. I understand the well south of Vidalia is down 5,200 feet and broke down. This should be in pay dirt now. Just what effect it is going to have on our buyer I do not know, but I am expecting him in here at the hotel tonight.
>
> "Awaiting your reply, and with personal regards, I am" (Plaintiff's Exhibit 94, p. 4; original sent in: Appendix 2504B. p. 41).

[8] The request for admissions No. 3 (R. Vol. 3, p. 414) states as follows:
"Plaintiff calls upon defendant to admit that R. M. Stricker has at all times been and is now entitled to a one-half interest in the timber and timber rights on Esperanza Plantation in Concordia Parish, Louisiana.

In reply to the foregoing communications, Morgan wrote Barchus by letter of date October 29, 1941 in which he stated:

"Yours of the 27th received, also copy of the 16th which I have never received.

"Also note you are sending us copies of a few letters which you asked us to return. Again sorry to state, we did not receive those letters. All we received was a copy of a letter we were supposed to receive on or about October 18.

"As to leasing the land for oil, I do not know of anyone else paying any more than $1.00 and if we hit oil it will be all right. *If we do not hit oil we will have the $1.00 anyway.*" (Emphasis added.)

"My suggestion to you is to lease *our* part of the mineral rights as I understand *we were to get half and the seller, Mr. Campbell, was to get the other half.*

"I also understand this agreement will go through at once, if so the 10% will be on the first payment only.

"This option is only good for ten days, therefore, you must place this lease on or before November 10 or we reserve the right to refuse or accept any lease after that date.

"I haven't talked this over with anyone else therefore it is strictly up to you.

"*Note what you say about Bob, we have never heard one word from Bob from the time he left us that day until the present time. I have asked Mr. Stricker to see him, but he hasn't had time.*" (Emphasis

added; Plaintiff's Exhibit 94, p. 5; original sent up; Appendix 2504B, p. 42.)

And in the last quoted communications, Morgan's use of the pronouns "we" and "us" and of the possessive plural pronoun "our" referred to Stricker whose name was also mentioned in the letter, as Morgan and Stricker were the only ones at that time having any interest in Esperanza Plantation except for Campbell's reservation of the minerals under the south half of Esperanza which is likewise referred to in that letter.

Following the foregoing communications, Barchus wrote Morgan a letter dated November 1, 1941 in which he stated:

> "I wish to thank you for your letter and want to say that the letter I wrote you enclosing Mr. Campbell's letter and the copy of my letter to Mr. Campbell (a copy of which letter I sent you later) was returned to me yesterday. It had been addressed to you in care of the Louisiana Box Company, 'Kena' Louisiana.
>
> "The party who had agreed to purchase this lease being a Mr. Elliott, turned me down; but I have a client coming in from Shreveport the fore part of this coming week that I am sure will take it. The lease will be made out for $1.00 per acre for the first year, and $1.00 per acre for renewal. I told him the price was $1.00. It will probably be handled by making out the lease and sending it to you for your approval and signature, and I want you to draw a sight draft for the full amount $1,250.00 and when the draft is paid and the papers returned to you, you can send me a check

for $125.00 for the commission." (Plaintiff's Exhibit 94, p. 6; original sent up; Appendix 2505B, p. 43.)

The above reference to the cash consideration of $1.00 per acre or a total of $1,250.00 and Barchus' expected commission of $125.00 being 10% thereof, together with his subsequent advice to Morgan that the lease Esperanza would "finally land in the Magnolia Company" and the fact that the lease on Esperanza ultimately made did "land in the Magnolia Company" established the identity of the $125.00 item shown to have been paid by Morgan to Barchus entered on Morgan's personal ledger sheet No. 74 (Plaintiff's Exhibit 48, original sent up; Appendix 2504B p. 5) and the check stub of Morgan's check to Barchus dated February 16, 1942 in the sum of $125.00 (Plaintiff's Exhibit 181; original sent up) as being commission paid by Morgan to Barchus for services in procuring the oil lease on Esperanza Plantation, and which by Morgan charged as were other items against Esperanza acquisition costs.

The oil lease on Esperanza was finally acquired by Magnolia Petroleum Company in that the lease as ultimately executed was executed to John Dale, Jr. as lessee and was assigned by him to Magnolia. Stricker was instrumental in the negotiation of this lease and in the final closing of it, as we shall now proceed to show.

Regarding the leasing, Morgan wrote Barchus on December 22, 1941, as follows:

"Yours of the 15th caught the writer out of town and note you say you feel that you can still sell the lease. Go ahead and sell it if you can and I

will still put the other fellow off, as *we* are trying to get a different lease from the Mississippi lease on *our* other places.

"Humble wanted to lease a couple of other places that we have down below Natchez, east of the Mississippi River. We are asking $1.00 per acre with $1.00 rental, with a different lease. *I don't know just what Mr. Stricker has in mind when he says 'a different lease' but*, as stated above, if you can lease this at $1.00, let it ride." (Plaintiff's Exhibit 94, page 12; original sent up: Appendix 2504B, p. 49.)

In the statement contained in that letter to the effect that "we are trying to get a different lease than the Mississippi lease on our other places", the reference to the plural pronoun "we" is to Morgan and Stricker obviously, particularly inasmuch as Morgan stated: "I don't know just what Mr. Stricker has in mind when he says 'a different lease' ". This constituted a further acknowledgment in writing by Morgan that Stricker was interested in the Esperanza property which was the property under discussion in the aforesaid letter.

We are enlightened as to "just what Mr. Stricker has in mind when he says 'a different lease' ", by the exchange of correspondence on the subject of the lease of Esperanza to Dale, by him assigned to Magnolia, i.e., Mr. Dale's letter to Stricker of December 31, 1941 and Stricker's notation thereon to Morgan of date January 1, 1942. (Pl. Ex. 37, original sent up: Appendix 2504B, pp. 60-61.)

Stricker was vitally and financially concerned with the terms of this lease which on behalf of himself and

Morgan he was negotiating. This fact was known to Morgan and known to Mr. Dale. Mr. Stricker was endeavoring to *limit liability on the covenant of warranty and to procure more favorable terms if there should be drilled a "shutin gas well"* than the usual (and concededly harsh) provisions whereby for $50.00 for one gas well the entire acreage could be held as "under production" and whereby the lessee would be relieved of payment of the annual $1250.00 delay rentals that would be applicable in Morgan's hands toward reduction of the $26,500.00 cost of the Esperanza property.

It was in recognition of this interest and participation of Stricker that Mr. Dale wrote Stricker, addressing him personally, to the following effect:

> "They also objected to increasing the $50.00 for a gas well for the reason that they say that if it cannot be marketed it is more valueless to them than to *you*, and in view of the fact that they would own 7 8ths under the lease which would be much more injurious to them not to market the gas than to *you*. In other words, they feel that they would be much more interested in marketing the gas than *you* would be and that such payment would only be made in case no market were available . . ." (Emphasis supplied.)

In recognition of their mutual interest in the terms of this lease, Stricker forwarded to Morgan the original of Dale's said letter, with his appended notation thereon, seeking a mutual agreement as to whether the lease should be finally executed and delivered.

It was a recognition of their mutual interest in the subject of this lease and the terms thereof that, on January 5, 1942, over telephone, Morgan gave Stricker authority to sign the lease and made notation of that fact on the original of the letter from Mr. Dale. (Pl. Ex. 37, original sent up.)

It was in recognition of their mutual interest in the subject of this lease that, agreeably to Morgan, Stricker authorized Mr. Dale to pass the lease and that, as requested, Mr. Dale sent Stricker the check for $1250.00 cash consideration made payable to Morgan with his letter to Stricker of date January 9, 1942 (Pl. Ex. 101, original sent up; Appendix 2504B, p. 62) to accord with the agreement between Stricker and Morgan that Morgan should receive all proceeds and profits from properties purchased until Morgan's costs had been paid; thereafter there to be an equal division of profits.

Morgan, though he received the original of Mr. Dale's letter (Pl. Ex. 37, original sent up) and made notations thereon, did not then, nor until years later, question or dispute Stricker's interest in this oil, gas and mineral lease.

The oil lease as finally executed bears date December 29, 1941 (Plaintiff's Exhibit 21, Exhibit S-2 to bill of complaint; R. Vol. 3, pg. 472) *and its terms were negotiated by Stricker with The Magnolia Company as was the final proof of execution of the lease, its delivery and collection* of the cash consideration, as shown by Plaintiff's Exhibits 37, 98 and 101. (Originals sent up).

ARGUMENT.

The record in this cause is replete with evidence showing that throughout their dealings with one another, the Stricker and Morgan contracted with reference to the jurisprudence prevailing in the State of Mississippi, and intended their rights and equities, their liabilities and responsibilities to be governed thereby; that they themselves by their transactions have evidenced the legal principles under which they intended to be governed, and so, whether from time to time they were dealing with property situate in Mississippi or in the State of Louisiana. It is manifest that Stricker and Morgan so intended to deal with regard to the Esperanza Plantation in Concordia Parish, Louisiana.

Even if it should be held that Mississippi law is not controlling herein, yet, under the law of Louisiana, Morgan is entitled to judgment as prayed for under Louisiana authorities hereafter mentioned, including the concepts or doctrine of quasi-contract and equity, acknowledgment, counter-letters, judicial admission, partnership and joint adventure.

(a) Quasi-Contract and Equitable Principles.

Stricker is entitled to all of the relief prayed for by him in this case under the Louisiana jurisprudence and statutory authorities pertaining to quasi-contracts and equitable principles.

The Louisiana Civil Code of 1870 (hereinafter referred to as L. C. C.) expressly provides for quasi-contractual relationships creating obligations which arise from a fact which is personal or relative to him who is bound (L.C.C. Art. 2292). Quasi-contracts are defined in L.C.C. Art. 2293 as follows:

> "Quasi-contracts are the lawful and purely voluntary act of a man, from which these results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties."

The acts giving rise to quasi-contracts are defined in L.C.C. Art. 2294 as follows:

> "All acts, from which there results an obligation without any agreement, in the manner expressed in the preceding article, form quasi-contracts. But there are two principal kinds which give rise to them, to-wit: the transaction of another's business, and the payment of a thing not due."

The above cited codal articles of the Louisiana Civil Code follow the wording of their counterpart in the French Civil Code, which in turn is predicated on Roman Law as set forth by Justinian (24 T.L.R. 141). Under the concept of quasi-contracts, the jurisprudence of Louisiana has firmly established that a partner who contributes capital and industry has a right of action against the other partner for a settlement of affairs (*Viens v. Brickle*, 8 Mart. (O.S.) 11 (1820); *Delamour v. Roger*, 7 La. Ann. 152 (1852); *Malady v. Malady and Caldwell*, 25 La. Ann. 448). The right of recovery in

such instance finds judicial sanction under the concept of equity principles found in L.C.C. Art. 21, which provides as follows:

> "In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is made to natural law and reason, or received usages where positive law is silent."

In the case of *Delamour v. Roger*, 7 La. Ann. 152 (1852), the court had for consideration an action for the recovery of an undivided one-half interest in real property. The plaintiff alleged and proved to the satisfaction of the court that she had contributed capital and or toward the acquisition of the immovable property and further, that she had received numerous letters from the defendant in which he acknowledged plaintiff's interest. The Supreme Court applied equitable considerations and awarded judgment in favor of the plaintiff for an undivided one-half interest in the immovable (real) property. The pertinent language of the court is as follows, to-wit:

> "The reasonable effect of article 2804 of the Civil Code, is to render the participator in concubinage incapable of recovering, as a universal partner, one-half of the property acquired, although her labor may have contributed nothing towards its accumulations; but, when her capital and labor has contributed a full share towards the result, equity entitles her to half the property acquired.
>
> "In addition to this, the defendant, in his numerous letters to the plaintiff, speak not only of 'our

commercial house', but of 'our houses', 'our property' and 'our rents', which he anticipates will be sufficient to support them comfortably in retirement in their old age. Some of these letters are sufficiently particular in description, to establish a legal title to certain properties and slaves as between the parties, and even as to third persons, if they had been recorded, and the knowledge that the parties were not man and wife, had been made public.

"The possession of the defendant cannot prevail against the frequent and long continued acknowledgment of joint ownership, based upon so much equity. It amounts to a legal title to half the property, supported by an equitable ownership, and no principle of law or morality requires us to reverse the judgment of the district court."

Similarly, the court in *Malady v. Malady and Caldwell*, 25 La. Ann. 448 (1873), held that where the industry of one is added to the thrift and economy of another so as to enable them to acquire property in the name of only one, then the property so purchased was jointly owned and each party was declared the owner of an undivided one-half interest in the immovable property. The court cited with approval the case of *Delamour v. Roger*, *supra*, and stated:

"—We think she should be allowed to place her capital and industry against the capital and industry of Malady, and that the property purchased during the time they have been living and working together, should be declared property in which they have a joint interest: that the one-half of it

should be decreed to be the property of Malady, and his half thereof be decreed to belong to the community which existed between himself and his wife."

Similarly, the courts have held that a quasi-contract arises when the estate of one has been enriched by the industry of another (*Succ. of Pereuilhet*, 23 La. Ann. 294 (1871), and that such a quasi-contractual relationship entitles the one who has contributed capital and labor to demand a settlement of the affairs and a participation in profits derived therefrom, although the property is immovable and stands in the name of the deceased (*Succ. of Llula*, 44 La. Ann. 61 (1892)).

The above cited cases establish that the Supreme Court of Louisiana has applied equitable consideration and awarded judgment in favor of Plaintiff for an undivided one-half interest in immovable (Real) property as distinguished from other decisions dealing with the specific partnership articles of the Louisiana Civil Code. The Supreme Court of Louisiana has affirmed this line of jurisprudence in the case of *Sparrow v. Sparrow*, 231 La. 966, 93 So. (2d) 232 (1957). In the *Sparrow* case, the plaintiff sought to be declared the owner of a one-half interest in certain realty. The Court found that the plaintiff was precluded from recovery since concubinage was the primary motive of the relationship. However, the Court implied, and one of the judges stated in a dissenting opinion, that, were it not for concubinage being the primary motive of relationship,

plaintiff therein would be entitled to recover. The pertinent language of the Court is as follows:

"(1) There could have been no legal partnership existing between the decedent and Amelia, because their going to live together was for a purpose forbidden by law.

"Plaintiff has cited cases to the effect that where the concubine has made an actual contribution to the assets of the succession, and the concubinage was merely an incident to the parties' living together, the concubine is entitled to recover a part of such assets. They are distinguishable from the present controversy.

"1. In Delamour v. Rogers, 7 La. Ann. 152, the doctrine of equitable ownership was upheld, but there the court found that the concubinage was merely an incident of a business to which the plaintiff concubine had contributed capital.

"2. In Malady v. Malady, 25 La. Ann. 448, the concubine proved that she contributed a large amount of the capital employed to buy real estate, and the property was all bought in her name.

"3. In Lagarde v. Dabon, 155 La. 25, 98 So. 744, this court merely permitted the concubine to recovery money which she had advanced.

"The case of Simpson v. Normand, 51 La. Ann. 1355, 26 So. 266, and authorities therein cited [illegible] the predicate in holding that where the initial motive and purpose for a paramour and concubine together was concubinage, and such relationship continues, the concubine is not entitled to recover assets of the joint entity on the theory of partner-

ship. The syllabus of that case correctly states that:

"'When the taint' (concubinage) exists, it affects fatally, in all its parts, the entire body of the claim.' See also, Viens v. Brickle, 9 Mart. (O.S.) 11; and Succession of Pereuilhet, 23 La. Ann. 294.

"(2) Here no reasonable conclusion can be reached from the evidence, except that the motives and purposes of plaintiff and deceased, from the very beginning, were that of concubinage. Such being the case, we are in duty bound to decide against the plaintiff.

"Judgment affirmed at plaintiff's costs.

"HAMITER, J., dissents with written reasons.

"SIMON, J., dissents.

"HAWTHORNE, J., absent.

"HAMITER, Justice (dissenting)

"Undoubtedly, the contributions made by plaintiff toward the accumulation of the assets in question were rendered in business transactions and enterprises independent of the concubinage relationship. This being true I am of the opinion that she is entitled to a one-half interest in the property acquired in decedent's name. Delamour v. Roger, 7 La. Ann. 152; Malady v. Malady, 25 La. Ann. 448; Prieto v. Succession of Prieto, 165 La. 710, 115 So. 911; Heatwole v. Stansbury, 212 La. 685, 33 So. (2d) 196, annotation at page 1297 of 31 A.L.R. 2d."

Equitable principles have also been applied by the United States Federal Court in a Louisiana case concerning partnership and joint venture. In *Porter v. Cooke*, 58 F.(2d) 1033, 63 F. (2d) 637, 127 F. (2d) 853, the case was before the Fifth Circuit Court of Appeals twice concerning an alleged partnership or joint venture in certain oil property. When the case was first before the Fifth Circuit in 63 F. (2d) 637, the Court held that the pleadings showed an investment of money by plaintiff and reversed the lower court decision and remanded the case. The pertinent language of the Court is as follows:

> "Allegations of the amended bill show that appellants were entitled to equitable relief, whether a partnership relation did or did not exist between them and the individual appellees. Allegations made show that, the individual appellees having been furnished money by the appellants for investment in property in the benefits of the ownership of which the appellants were to share, and moneys so furnished having been used by the individual appellees in acquiring properties referred to, a trust resulted in favor of the appellants. Brainard v. Buck, 184 U. S. 99, 22 S. Ct. 458, 46 L. Ed. 449; Hainesville Oil Co. vs. Beach, 159 La. 615, 105 So. 790. A consequence of such trust was that, within the meaning of the statute (28 USCA Sec. 118) providing for service by publication on absent defendants, the appellants had an equitable claim to the above referred to property which in equity was in part owned by them. Hamilton v. Young (C.C.A.), 285 F. 223. For the enforcement or protection of the alleged equitable claim relief

was grantable under the amended bill's prayer for general relief. Hardin v. Boyd, 113 U.S. 756, 5 S. Ct. 771, 28 L. Ed. 1141. We are of the opinion that the above mentioned rulings were erroneous."

Thereafter certain fact findings were made showing that plaintiffs did not actually have an interest in the enterprise with the defendant. However, the pertinent language of the court is as follows:

127 F.(2d) 857.

"The theory on which the master found for plaintiffs and which plaintiffs press here, that by acquiring leases and properties from Emiet, Cooke and Gay became joint adventurers under an obligation to continuously devote their time and money and talents to the service of the plaintiffs falls flat, with the finding that there was never at any time, any agreement or understanding of any kind that Cooke and Gay or either of them, were or would be joint adventurers with plaintiffs. For, whatever in-law a joint adventurer this case law hybrid of recent origin and undetermined connotation may be, and however difficult to distinguish in particular cases between joint adventures and partnerships, some courts having gone so far as to say that they are subject to the same rules and principles, it is as fundamental to the existence of a joint adventure as it is to the existence of a partnership, that there be a contract between the parties that they are or are to be joint adventurers. As in partnerships whatever the case as to outsiders, as between the members the relationship of joint adventurers is a matter of intent and arises only where they intend and agree

to associate themselves as such. 30 Am. Jur. page 681."

The common law concept of joint adventure has been integrated into the jurisprudence of Louisiana under Article 21 of the Civil Code referred to herein. In Louisiana the relationships of joint adventure does not have to be established by a specific written contract, but can be proven by action of the parties, their correspondence, memoranda, and other writings. *Daspit v. Sinclair Refinery Co.*, 198 La. 9, 6 So(2d) 341, 345; *Pillsbury Mills v. Chehardy*, 231 La. 111, 90 So.(2d) 797. Under these decisions, the contract or agreement may be expressed or implied.

The case of *Thompson v. Walker*, 235 La. 132 103 So (2d) 65, 67 (1958), recently decided by the Supreme Court of Louisiana, bears a marked similarity to the present case before the Court for decision. In that case the Court applied equitable principles and held that even though a tax title was acquired in the name of a bank it was holding title for the tax debtors as evidenced by the way the bank subsequently handled the transaction on its books and records even though there was no written agreement or recorded counter letter between the bank and the tax debtors. The pertinent language of the court is as follows, to-wit:

"The record shows that the bank charged the cost of purchasing the property at the tax sale to the Thompsons, as reflected by the bank statement headed 'Tax Subrogation Account, J. C. Thompson, et al.' wherein, on the day prior to the tax

sale, the Thompson account was debited for $76.95, the exact amount of delinquent taxes due for the year 1931, plus fees and penalties. The account further reflects the bank thereafter continued to charge to the Thompsons the taxes and expenses paid by it in the succeeding years, the bank, according to the sworn statement of its cashier, having 'recovered all of the money which they (it) paid out for taxes.' During all of these years the bank treated the property at all times as belonging to the Thompsons, even accounting to the plaintiff for a sixth of the amount realized from the sale of timber on the property after deducting his proportionate share of the taxes for the years 1935 and 1936.

"From the foregoing it would appear the bank purchased the property at the tax sale for the Thompsons, never intending to acquire title itself, but only to protect its mortgage covering the 5 6ths interest therein. By foreclosing on this mortgage ten years later, the bank not only judicially admitted it was without title to the property, but that its only interest therein was as the holder of the mortgage being foreclosed. Consequently, Walker, as the purchaser at the foreclosure sale, is bound by this judicial admission and cannot now be heard to question the ownership of the seized debtors in and to the property. It necessarily follows that the instrument of July 17, 1943 executed three days later without consideration and without warranty of title, conveyed to Walker only such interest as the bank had after a full disclosure of the facts."

By the record herein it is shown that with reference to the purchase of Esperanza Plantation the parties (Stricker and Morgan) dealt with each other and the subject of that purchase in all respects as they had done in the numerous other instances when they similarly had acquired timber, lands, and lands and timber, in Mississippi in some instances, in Louisiana in others. It would be inequitable to permit Morgan to deprive Stricker of his rights and benefits and to thereby unjustly enrich himself. The contract between them is implied, in the absence of a formal or authenticated contract. This contract under the Louisiana law is termed a "quasi-contract".

By this quasi-contract, as it is established in this record, Stricker and Morgan entered into an agreement between themselves, the terms of which provided that it was the specific intention of Morgan to advance the purchase price for and acquire in his name the Esperanza Plantation lands and timber in consideration for Stricker's contribution of his labor, skill and industry in finding the property, cruising the timber, negotiating for the purchase, the management of the Esperanza Plantation and other services to be endered. The intention to so contract and the consent of the parties has been established by the testimony of witnesses who testified in this cause, and from the letters by Morgan to John Dale, Jr., dated February 12, 1941,[6] and September 23, 1941,[7] and other facts. Stricker has unequivocally shown that Morgan was reimbursed for the purchase

[6] Pl. Ex. 87, R. Vol. 8, pp. 1435-1437.
[7] Pl. Ex. 36, original sent up.

price out of funds and revenue derived from the sale of a portion of the Esperanza timber, but, despite the rquests of petitioner and petitioner's rights thereto, has failed to execute a deed conveying a one-half interest in the Esperanza Plantation to Stricker, all of which constitute a breach of contract effective as of February 10, 1947, when Morgan was reimbursed for the purchase price.

Stricker has further established that Morgan did not simply neglect to execute the conveyance to Stricker through oversight, but Morgan intended to and did in fact on August 18, 1952 execute donations to third parties, who were his relatives and children, for the express purpose of defrauding plaintiff of his interest in Esperanza Plantation.[8]

We submit that Morgan specifically intended to defraud Stricker of his rights in and to the Esperanza land for the reason that Morgan knew that there was a good possibility of oil, gas and mineral operations and production on the said property and Morgan was so advised to that effect.[9] That exhibit is a letter written by Morgan to Barchus Realty Company, Natchez, Mississippi, attention Charles Barchus, dated November 25, 1941, which states:

> "Yours of the 24th received and note what you say about the ten-year lease.
>
> "I have offered this to another party, subject to prior lease. Get your papers in quickly if you pos-

[8] Pl. Ex. 26, being Exhibits 5-7 through S-17 to the bill of complaint, R. Vol. 2, pp. 246-319.
[9] Pl. Ex. 94 (Sheet 9), original sent up.

sibly can, as the other fellow has not said anything to me for a few days. In your last letter you wrote as if it might be a little bit shaky, but my attorney is quite an oil man and he says the proposition looks mighty good up there and said he could lease it almost within a week. Get your papers in quickly if possible then there will be nothing wrong, but if he gets in ahead of you, of course, I expect his to go over. I will write (wait) ten days on you before I will accept anything from him. I will call him on the phone and tell him that I will give you a ten-day option."

The intent of Morgan to defraud Stricker of his rights in and to the Esperanza land is further established by the testimony of George Lacey, who qualified and testified in this cause as a handwriting expert. George Lacey, testified in connection with Pl. Ex. 47 and more particularly with regard to Ledger Sheet 74, a part of Pl. Ex. 47 and Pl. Ex. 48, in connection with a request by Stricker to determine whether or not the top line on Pl. Ex. 48 which reads "J. P. Morgan, Esperanza Timber Land", was a continuous writing. The result of George Lacey's testimony conclusively established that the phrase "Esperanza Timber" was written on Pl. Ex. 48 before the words "J. P. Morgan" and "Land" were added thereto at a later date, although apparently by the same person, but who used a different pen and typ of ink.[10]

Morgan's intent to defraud Stricker of his rights in and to Esperanza Plantation is further shown by refer-

[10] R. Vol. 6, pp. 1038-1051 and exhibits referred to therein.

ence to the exhibits filed in this proceeding, which show that Morgan manifested and put into effect his concerted plan to defraud Stricker as aforesaid, by executing various donations of mineral and royalty interests in, on and under Esperanza Plantation to his children. This intention is further manifested by the altered ledger sheet (Pl. Ex. 48) and change in accounting procedure as evidence by the statement of Louisiana Box & Lumber Company dated December 31, 1943.

(b) Acknowledgment.

Whether or not it be held that Stricker is entitled to the relief by him prayed under applicable jurisprudence of Mississippi hereinbefore discussed or under the principles covering quasi-contracts prevailing in the jurisprudence of Louisiana, yet Stricker is entitled to his relief under the law of Louisiana by reason of Morgan's acknowledgment of Stricker's rights, interest, title and equity.

This right of recovery is established by the acknowledgments contained in the letters, income tax returns and ledgers filed in evidence in this cause.

Stricker has filed in evidence a letter dated September 16, 1941, addressed by John Dale, Jr. to Morgan, wherein John Dale, Jr. inquired of Morgan as follows:

> "I have a proposition for the purchase of your *Espersons lands, excepting therefrom all timber*, and would appreciate your letting me know your

best price and terms, allowing a 5% commission for making the sale."[11] (Emphasis supplied.)

Morgan's reply thereto dated September 23, 1941, has been filed in evidence herein, and states as follows:

"Yours of the 16th caught the writer out of town.

"Note you probably have a purchaser for the *Esperanza land*. We would not mind selling the land with the right to reserve the timber and oil rights. I have information from fairly responsible sources that there may be a possibility of a good oil lease on this land. So if it is just the land you are interested in *we would be more than glad to have you offer us the proposition you have and I will take same up with our good friend Mr. Stricker who is a partner in this buy.*"[12]

The Louisiana jurisprudence is to the effect that letters and parol evidence are admissible to show recognition of rights,[13] and when letters are written at an unsuspicious time they are entitled to great weight.[14] The Louisiana Courts have further held that an acknowledgment by letter amounted to legal title to property supported by an equitable ownership[15] and that such written admissions are as binding as if interrogated on oath[16] and have been found to be proof of an agreement to sell and acceptance[17] and served as a basis for a suit

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[11] Pl. Ex. 31, R. Vol. 3, p. 495.

[12] Pl. Ex. 32, R. Vol. 3, p. [illegible] original sent up.

[13] [illegible] 28 La. Ann. 532 (1876).

[14] [illegible] *Indep. Nat. Life Ins. Co.*, 148 So. 264 (1933).

[15] [illegible] 152 La. 1[illegible].

[16] *Brice v. Abrams*, 12 La. Ann. 783 (1857).

[17] [illegible] 161 La. 378, 108 So. 777 (1926).

for specific performance in confirmation of a verbal agreement to sell.[18]

Of particular importance is the method by which Morgan reported the income derived from the lease bonus and subsequent delay rentals paid under the oil, gas and mineral lease covering the Esperanza Plantation. Frank Byars, a Certified Public Accountant and witness for Stricker in this cause, specifically testified that for the years 1941 through 1944 *only one-half* of the original cash consideration (Lease bonus) and delay rentals were reported on the income tax returns of J. P. Morgan and of his wife and of his son, E. C. Morgan, though the entire amount was shown on Morgan's Ledger Sheet 74 (see Footnote 47, *supra*). By signing the income tax returns for those years, Morgan acknowledged in writing and under oath that the remaining unreported one-half cash bonus and delay rentals was vested in another (who else could it have been but Stricker) and that Stricker therefore has an undivided one-half interest in the Esperanza Plantation, including land and timber. We would refer this Honorable Court to the statement which is contained on the said income tax returns of Morgan, as follows:

> "I we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me us and to the best of my our knowledge and belief is a true, correct and complete return made in good faith for the taxable year stated pursuant to the Internal Revenue Code and the regulations issued under the authority thereof."

[18] *Cerami* v. *Haas*, 195 La. 1048, 197 So. 752 (1940).

That the signing of the income tax returns by Morgan, as aforesaid, constitutes an acknowledgment under oath of Stricker's ownership of an undivided one-half interest in the Esperanza Plantation is substantiated by a recent decision of the Louisiana Supreme Court in the case entitled *Jones v. Jones*, 106 So. (2d) 713 (rehearing denied December 15, 1958). In that case, involving an action for an accounting as to the undivided half interest in an oil and gas lease co-owned by defendant and decedent but held in defendant's name, the court (Chief Justice Fournet as organ of the Court) considered the defendant's answer wherein it was stated that the "—interest so acquired by defendant was owned jointly by him and his brother, in the proportion of a half each, and decedent had so acknowledged by instrument in writing and under oath on May 16, 1950; similarly his wife, the plaintiff, acting individually and on behalf of her husband, had made the same type of acknowledgment in two separate instruments under oath and dated August 1, 1949." Those acknowledgments were made on Form 843 of the Treasury Department, Internal Revenue Service. The pertinent language of the Court is as follows, to-wit:

> "Turning now to plaintiff's contentions on the merits, her arguments do not impress us. The trial judge, defining the relationship between deceased and defendant and rejecting the labels (depository, joint adventurers) sought by opposing counsel to be placed thereon with resulting legal effect, correctly held that '. . . so far as it goes, the parties were co-owners, and as such, since

the property was in defendant's name, he became the agent of the deceased and is bound as such, and is entitled to be reimbursed for any expenditures he made on behalf of or for the account of the decedent.'"

It is submitted that the letters, income tax returns and ledger sheets filed in evidence in this cause constitute an acknowledgment of the agreement and reciprocal obligations existing between Stricker and Morgan herein, and such written admissions are as binding as if interrogated on oath.[19] The effect of the acknowledgment is to grant Stricker a right of action against Morgan on any one of the several alternative grounds under which recovery is sought.

(c) Counter-letters.

As a further alternative ground of recovery Plaintiff cites the many letters, income tax returns (See discussion under acknowledgment, *supra*) and ledger sheets filed in evidence in this cause, and particularly the letters cited hereinabove which constitute counter-letters and acknowledgments by Morgan that Stricker has or is entitled to have vested in him an undivided one-half interest in the Esperanza Plantation, both land and timber. The Louisiana jurisprudence has held that the parol evidence rule, which has been so strongly stressed by counsel for Morgan, was not to be controlling in view of the contents of the counter-letter. In the case of

[19] *Bair v. Abrams*, Footnote 110, supra.

Louis v. Garrison, 64 So. (2d) 254 (La. App. Orl. 1953), the Court stated:

> "The rule of evidence that parol evidence is admissible to show the true consideration not only exists in this State but exists throughout this country. In our jurisprudence it is well settled that the real cause and consideration of a written contract pertaining to immovable property may be shown by any sort of evidence even though the act does not recite a consideration, or expresses a different one. See Dart's New La. Dig. Vol. 7, page 215, Sec. 241.
>
> "The written instrument above quoted, which recognized the rights of defendant to live in 3135 Congress Street after the sale, and which specifically granted them the right to remain there during their natural lives, is in the nature of a counter-letter, as was held by the trial judge.
>
> "The only mention of counter-letters in the LSA-Civil Code is to be found in Article 2239, which recites in part: 'Counter letters can have no effect against creditors or bona fide purchasers; * * * We have searched in vain for any codal or statutory definition of the term. In Karcher v. Karcher, 138 La. 268, 70 So. 228, 229, the Supreme Coudt, quoting Bouvier, defined a counter-letter as:
>
> " 'An agreement to recovery where property has been passed by absolute deed with the intention that it shall serve as security only. A defeasance by a separate instrument.' Bouvier.

"Both 1 Bouvier's Law Dict., Rawl's Third Revision, page 814, and Black define the word 'defeasance' as an 'instrument which defeats the force or operation of some other deed or of an estate'.

"In the act of sale the vendors set over, abandoned, and delivered, with all legal warranties and with substitution of warranty their ownership of the whole of Lot 8 to the purchaser, Louis, who was present and accepted the transfer and acknowledged delivery and possession of the property.

"When we consider the import of the instrument relied upon by defendants, and also consider the cause of its execution and the purpose which it was intended to fulfill, we think that the document operates as a partial defeasance, as it was calculated to and does defeat or offset the force or operation of the act of sale, which, by its terms, constituted Louis the owner of the property and entitled him to have the full and complete use and possession thereof. The instrument can be classified as a counter-letter, as it defeats Louis' right to demand of defendants the possession of the two rooms occupied by them.

"The document was properly admitted. The rule of evidence relief upon by plaintiff to support his objection as set forth in LSA-C.C. art. 2236, to the effect that the authentic act is full proof of the agreement contained in it as against the contracting parties, does not control in this situation.

"It is the unbroken rule of law in this State that parties to authentic acts, even in the absence of

fraud or error, may assail the verity of the recitals of a deed either by a counter-letter or by the answers of the other party to interrogatories on facts and articles. Incidentally, only in these two ways may the recitals of the authentic act be assailed. Lawrence v. Claiborne, 215 La. 785, 41 So. 2d 680, and cases there cited."

It is not necessary that counter-letters must be executed contemporaneously and at the same time the transaction is closed. In the case of *Morgan v. Hathaway*, 77 So. (2d) 169 (La. App. 1st Cir. 1955), it was stated in a concurring opinion by Judge Cavanaugh as follows:

"I find the following in Volume 17, page 462, Tulane Law Review:

"In a simulated contract there is an apparent expression of the will creating a false belief to the external world and a true representation of the will which remains a secret between the contracting parties. The secret act which is reduced to writing is called a counter letter. Inasmuch as parol evidence cannot be admitted either against or beyond what is contained in an authentic act, the only way in which the verity and reality of an authentic act may be attacked by the parties to the act is: (1) by means of a counter letter, and (2) by the answers of the opposing party to interrogatories on facts and articles. However, this rule of exclusion is not binding on third parties. It is also important to note that this rule applies to movables as well as to immovables.

"Where a counter letter is duly recorded it affects all persons, even creditors, from the time of record-

ing. *An unrecorded counter letter can have no effect except between the parties. But a counter letter is nonetheless effective between the parties because it is under private signature. In order for a document to constitute a counter letter it is not necessary that it should be contemporaneous with the act attacked.* It is sufficient to set aside the act if the writing offered against it, of whatever date, contains an admission that the alleged sale was a simulation. Nor is the plaintiff in such action estopped by any stipulation in the act, or by the warranty contained therein, from proving the falsity of the act. However, where a sale has a real cause it cannot be invalidated by the production of a counter letter. The counter letter is valid against all persons except creditors and bona fide purchasers.

"I believe that the affidavit executed by the plaintiff in this case is in the nature of a counter letter and clearly states that at the time it was executed they had no interest in the property and must be considered as an effective renunciation. Pollock v. Dubin, 46 La. Ann. 906, 15 So. 167." (Emphasis supplied.)

(d) Judicial Admission.

Further, during the course of the trial of this cause, Defendant admitted that Stricker is entitled to and does own an undivided one-half interest in the timber and timber rights on Esperanza Plantation, as will more fully appear from an excerpt of the Transcript of Testimony, as follows, to-wit:

"BY MR. BRUNINI:

"Now we repeat to Your Honor that we are willing to admit to No. 3, that R. M. Stricker is now entitled and has been entitled to an undivided one-half interest in the timber on Esperanza Plantation. We still are willing to make that admission. We do say to your Honor that has not been an issue in the case and is not joined as an issue by the pleadings.

"BY THE COURT:

"As I understand it, you admit No. 3, but deny a partnership in the ownership, but admit that he owns a half interest in the timber and the timber rights.

"BY MR. BRUNINI:

"That is correct."

Under the specific provisions of West's Louisiana Statutes Annotated—Revised Statutes Title 9, Sec. 1103,[21] standing timber is an immovable. The Defendants admit Plaintiff's right, *ab initio*, to an undivided interest in an immovable (timber) in one instance, yet deny Stricker's right to an undivided interest in the land itself, the minerals thereunder the portions of the land that may be presently barren of timber growth, the mineral lease, all of which are likewise classified under Louisiana law as immovables. Morgan precluded himself from denying Stricker's right to a one-half interest in the entirety of the Esperanza Plantation and in the mineral lease and the profits therefrom by admitting that Stricker owns a half interest in the timber

The only way that Stricker could have acquired an interest in the Esperanza timber is by virtue of the agreement pursuant to which the Esperanza Plantation was purchased in the name of Morgan for the benefit of Stricker and Morgan. By admitting that Stricker is entitled to an undivided one-half interest in the Esperanza timber, an immovable, Morgan is precluded from denying Stricker's undivided one-half interest in the Esperanza land and all rights thereto since there was only one agreement pursuant to which the Esperanza Plantation was purchased.

Morgan's right and title does not stem from the admission, but from the original acquisition under the agreement between Stricker and Morgan. The admission is evidence, conclusive, irrebuttable and binding evidence of Stricker's right and title. The rights and title of Stricker are otherwise evidenced the record in this cause, including written admissions of Morgan made long prior to the institution of this suit. The Judicial Admission made in the course of this trial made that evidence conclusive and irrebuttable. As has been shown in the record the acquisition of Esperanza Plantation was effected by one document or instrument—the deed from Campbell—[22] which deed made no separation of title to the timber from the rest of the land (immovable) that was thereby conveyed. Morgan is bound by such a judicial admission.[23]

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[22] Pl. Ex. 20 (Ex. S-1 to Bill of Complaint), R. Vol. 1, p. 181.

[23] *Guilleau v. Guilleau*, 71 So. (2d) 120; 224 La. 837; *Dupit v. Sinclair Refining Co.*, 208 La. 9, 3 So. (2d) 259; *Coleman v. [illegible]*, 131 La. 803, 60 So. 213; *Beard v. Vincent*, 171 La. 869, 111 So. 862; *Scottish Union & National Insurance Co. v. Warren Gro[illegible]*, 50 So.2d

Although the Louisiana jurisprudence is to the effect that timber may be separated in ownership from the land either by way of a timber sale or sale with a reservation of the timber,[24] in the present case, the act of sale covering the Esperanza Plantation by A. H. Campbell dated December 30, 1940, did not separate the ownership of the land from the timber. The Esperanza Plantation was sold as an entirety, as more fully appears by reference to the exhibits on file in this cause, particularly the three separate checks that were given in payment for the Esperanza Plantation purchase, wherein it was noted by an endorsement of purpose of the back of each check that the Esperanza Plantation was acquired as an entity without separation of the land from the timber.

By virtue of Defendant's Judicial Admission, Stricker is entitled to all of the relief prayed.

Counsel for Morgan at the trial in response to a "Request for Admission" admitted for the record that J. P. Morgan and R. M. Stricker each own an undivided one-half interest in the timber on Esperanza Plantation (see page 22 of this Petition). This judicial admission that Stricker owned an undivided one-half interest in the timber on Esperanza Plantation was without limitation. Notwithstanding this fact, the District Court held that Stricker owned an undivided one-half interest in the timber on Esperanza Plantation that was in being

[24] *Eugenia v. Crowell, Long Leaf Co.*, 20 So. (2d) 641 (1945); *Cooley v. Meridian Lumber Co.*, 195 La. 631, 197 So. 255, 260 (1940); *Gray v. Edgar Lumber Co.*, 138 La. 906, 70 So. 877 (1916).

on the date of the purchase in January of 1941. There is not one scintilla of evidence in this record to justify such a conclusion and, to the contrary, it is in direct conflict with the judicial admission referred to herein.

BID OF LOUISIANA BOX AND LUMBER COMPANY (MORGAN'S COMPANY) FOR TIMBER ON ESPERANZA PLANTATION.

The Court of Appeals, in commenting on the findings of the District Court, said: "From all of this evidence the court reached the definite conclusion that the Esperanza deal was separate from all the others, that the timber was purchased funds of Louisiana Box and Lumber Company and was held by defendant for the joint benefit of plaintiff (Stricker) and said company, that the land was purchased by defendant, and that plaintiff acquired no interest therein; and that the oil, gas and mineral rights, being a part of the estate in the land itself, were the property of the defendant free from any claim of the plaintiff."

This finding is contrary to the evidence in the case. When Stricker and Morgan concluded to sell the timber on Esperanza Plantation in 1947, the same Louisiana Box and Lumber Company that the Court said owned the timber on Esperanza submitted a bid to Morgan and Stricker for the timber, which bid was in competition with the bid submitted by General Box Company of Natchez, Mississippi.

The bid of said Louisiana Box and Lumber Company is as follows:

"Kenner,
Louisiana.
Januarry, 14th, 1947

"Messers. J. P. Morgan and R. M. Stricker.
Woodville, Miss.
C O A. H. Jones's Office.

"My Dear Sirs;-

"We wish to offer, the sum of Eighty thousand Dollars, for any and all timber; which when cut during a term of five, years from date, will measure across the stump, 14 inches in diameter and up, which timber, is now standing and being upon the Esperanza Plantation and now owned by you.

"Very truly, Yours.
"Louisiana, Box and *Loumber*, Co.
"by. *s/ Catherine M. Gonzales.*

(Plaintiff's Exhibit 118; Appendix VII. p. 58.)

ALTERATION OF THE RECORDS.

It was established by handwriting experts that the record shows that Miss Catherine Gonzales, Morgan's secretary, acting pursuant to instructions from Morgan, changed the caption of the ledger sheets and made out new ledger sheets in an effort to show that Louisiana Box and Lumber Company had bought the timber and that Morgan had bought the land of Esperanza separately and to otherwise "alter the picture" on Morgan's

records; and all of the evidence indicated that this was done subsequent to the sale of timber to General Box Company and about the time of discovery of oil in the vicinity of Esperanza and that such was done without the knowledge of Stricker.

STRICKER'S INTEREST DISCLOSED BY PIPE LINE RIGHT-OF-WAY GRANTS AND RECEIPTS FOR LAND DAMAGES.

The fact that Stricker at all times claimed an interest in the land and his rights were admitted by Morgan were disclosed by the several right-of-way grants that each Morgan and Stricker executed to oil pipe line companies and their receipts for damages not only to timber but to land as well. (Plaintiff's Exhibits 25, 24, 158 (Sheet 15), 158 (Sheet 4), 27, 158 (Sheet 2), 158 (Sheet 6), 158 (Sheet 8), Appendix 2504B, pages 97, 100, 101, 103, 104, 105).

SUPERVISION OF ESPERANZA PLANTATION BY STRICKER FOR ACCOUNT OF STRICKER AND MORGAN.

From the date Esperanza Plantation was purchased to the date this suit was filed, the record shows Stricker continued to supervise activities on Esperanza for the account of Stricker and Morgan. He had surveys made for which he paid one-half, attended to proper location of tank batteries for the production of oil on the property, advised with Morgan from time to time concerning the property, and Morgan, according to witness for Defendant, Hunter Jones, said that Morgan stated to him in 1952 that any trade Jones made respecting the loca-

tion of tank batteries and well sites on Esperanza would be approved by Morgan.

Morgan and Stricker together inspected the Esperanza property as late as 1952.

Stricker and Morgan sold part of the timber on Esperanza Plantation in 1947. Competitive bids for the timber were requested by Stricker and Morgan, and Morgan's company (Louisiana Box and Lumber Company) submitted a bid to Stricker and Morgan for the timber as did General Box Company, of Natchez, Mississippi. General Box Company was the successful bidder. The proceeds from the sale of the timber, after the deduction of Morgan's costs, were divided between Stricker and Morgan equally.

It was not until 1947, after the sale of the said timber and receipt of the bonus and rentals from the oil and gas lease that Stricker was entitled to recover his interest in the land.

After oil development became eminent in 1944, Stricker and Morgan corresponded for the first time with respect to the issues involved in this suit, and at no time did Morgan take a positive position that he would attempt to deprive Stricker of his interest in the land, but left the matter for negotiation, and it was not until after the suit was filed that Morgan took a definite stand in this regard.

There is no evidence in the record whereby Stricker disclaims his interest in the land.

The following findings of the District Court, sanctioned by the Court of Appeal in its opinion, have no factual support in the record, and, indeed, are contrary to the positive evidence in the record established by correspondence, letters, memoranda, checks, and other writings, and the action of the Court of Appeals in sanctioning these findings has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision:

a. "Plaintiff knew and understood that he had no interest in Esperanza Plantation beyond the participation in the profits from the sale of the timber".

b. "In all his dealings with defendant, Plaintiff conducted himself as a broker or middle man—"

c. "Plaintiff knew and understood from the date of the purchase of the Esperanza Plantation that he had no interest in the land beyond a share in the profits from the sale of the timber—"

d. "Defendant has been in full, open possession of the Esperanza Plantation since December 30, 1940 and has exercised all instance of ownership in connection with the Esperanza and from that date".

e. Many many "findings of fact" contained in the opinion of the District Court which by the affirming opinion of the Court of Appeals were sanctioned despite lack of evidence to support some and despite the fact that such findings were contrary to the record evidence.

Further, it is submitted an examination of this record will disclose that the evidence consists of documents, records of account, accountings, exchanges of communications, and other writings, and petitioner's case does not depend in whole or in part upon the testimony of witnesses. There is no array of witnesses disputing one another, so the statement by the Court of Appeals, that the District Court was in a better position to judge the witnesses has no application whatsoever in this litigation. The case is based entirely on written evidence.

As stated herein, the opinion of the District Court and the Court of Appeals, particularly the findings of the District Court, are not supported by the documentary evidence in this case, and to the contrary, do violence to the documentary evidence introduced, particularly, but not exclusively, the written admissions and acknowledgments of the said Morgan, which admissions of the said Morgan conclusively show Stricker owned an undivided one-half interest in Esperanza Plantation as he did all other transactions between Stricker and Morgan.

To permit the opinion of the Circuit Court of Appeals to stand is a gross miscarriage of justice, is contrary to the established principles of Louisiana jurisprudence as set out herein, and does violence to the undisputable written evidence constituting this record.

The opinion of the District Court and the Court of Appeals is contrary to the law of the State of Louisiana

as established by the decisions of Louisiana Supreme Court, set out herein, and for the Court of Appeals to sanction such action on the part of the District Court, we submit, with respect, is cause for the exercise of this Court's power of supervision.

WHEREFORE, it is submitted that a writ of certiorari should be granted herein.

Respectfully submitted,

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